

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

RODNEY BARNETT,

Petitioner,

vs.

LARRY NORRIS, Director,
Arkansas Department of Correction,

Respondent.

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No. 5:04cv00159 SWW

ORDER

Before this Court is petitioner Rodney Barnett's application for a certificate of appealability from the dismissal of his 28 U.S.C. § 2254 petition for habeas corpus [doc.#17]. This Court has the authority to issue such a certificate. *See, e.g., Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997), *cert. denied*, 119 S.Ct. 89 (1998); *Tiedeman v. Benson*, 122 F.3d 518 (8th Cir. 1997). A certificate of appealability certifies that the applicant has made a substantial showing of the denial of a constitutional right, that is, a showing that the issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings. *See, e.g., Carson v. Director of the Iowa Dept. of Correctional Services*, 150 F.3d 973, 975 (8th Cir. 1998), *cert. denied*, 119 S.Ct. 819 (1999). With respect to claims that are procedurally barred, the Eighth Circuit has summarized the factors to consider when determining whether a certificate of appealability should issue when a habeas claim is denied on procedural grounds: "(1) if the claim is clearly procedurally defaulted, the certificate should not be issued; (2) even if the procedural default is not clear, if there is no merit to the substantive constitutional claims, the

certificate should not be issued; but, (3) if the procedural default is not clear and the substantive constitutional claims are debatable among jurists of reason, the certificate should be granted.” *Khaimov v. Crist*, 297 F.3d 783, 786 (8th Cir. 2002) (citing *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000)). After reviewing the record in this case, this Court determines that petitioner has failed to make the required showing of the denial of a constitutional right as to the claims addressed on the merits and that the remainder of petitioner’s claims are procedurally barred. Accordingly, petitioner’s motion seeking a certificate of appealability should be and hereby is denied.

IT IS SO ORDERED this 11th day of July 2005.

/s/Susan Webber Wright

CHIEF JUDGE
UNITED STATES DISTRICT COURT